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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/715,515

11/19/2003

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05/04/2006

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EXAMINER

WEEKS, GLORIA R

ART UNIT

PAPER NUMBER

3721

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/715,515

Applicant(s)

CAPORALI ET AL.

Examiner

Gloria R. Weeks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19 and 26-35 is/are allowed.
- 6) ☒ Claim(s) 1-18, 20-25 and 36-39 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

1. Claims 5, 15, and 19 have amended.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-7, 11, 12 and 36-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Malow (USPN 5,280,694).

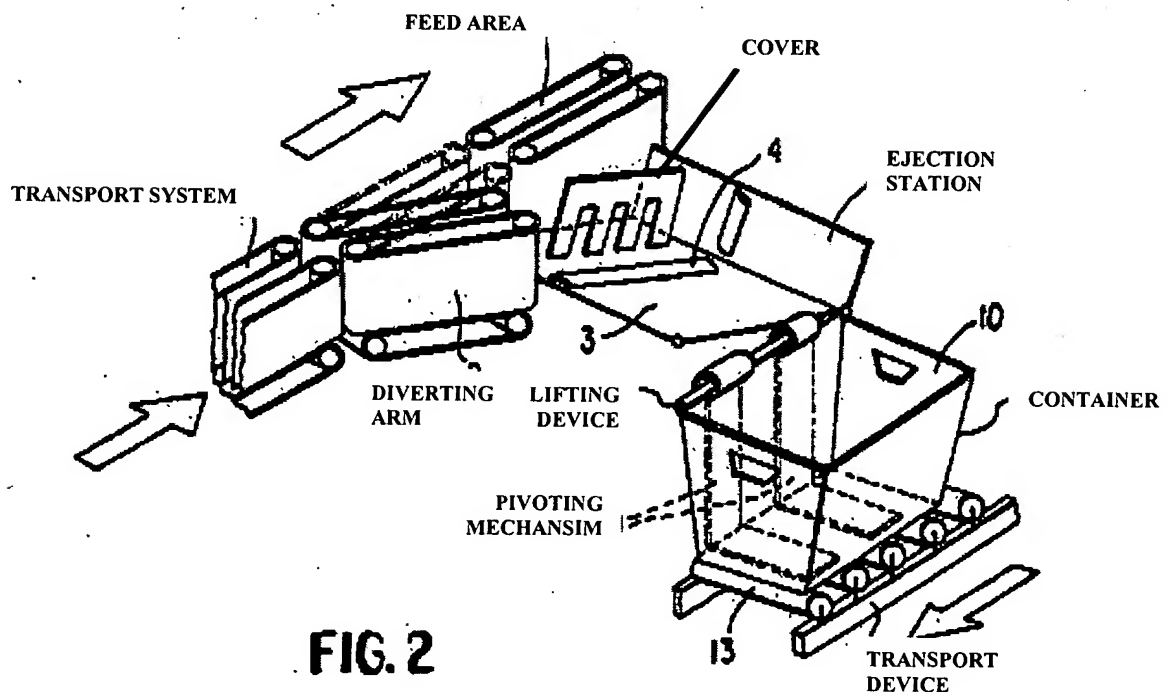
With respect to claims 1-4, 6, 7, 11 and 12, Malow discloses a device for stacking product, comprising: at least one pivoting mechanism (9) pivotable between a loading position and a initial/final position, the pivoting mechanism retains a container (8) thereon; at least one diverting mechanism including a swingable diverting arm (2) corresponding to the at least one pivoting mechanism (9), the at least one diverting mechanism injecting product into a container (8); a feeding area (1; see figure below) including; an ejection station (3) injecting the product into the container (8); a transport system (1; see figure below); a lifting device (11); a container transport device (12, 13); and inherently discloses a controller.

In reference to claim 5, Malow discloses a device for stacking product, comprising: at least one pivoting mechanism (9) and at least one diverting mechanism (2) corresponding to the at least one pivoting mechanism (9). Although Malow does not illustrate a second pivoting mechanism (9) and second diverting mechanism (2), Malow discloses on column 1 lines 47-49

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that at least two diverting mechanisms and at least two diverting mechanisms separated by a second feeding area exist in the apparatus of Malow.

With respect to claims 36-39, Malow discloses a method for stacking product for feeding product (18) in a horizontal orientation in a travel path and depositing the product (18) into a container (8), the method comprising the steps: rotating the container (8) from a horizontal configuration to an inclined configuration (figures 1-2); feeding product in substantially vertical orientation into the container (8); covering (15) the container (8) to ensure product is not ejected therefrom; and rotating the container (8) from the inclined configuration to the horizontal configuration, thereby positioning each product (18) in the container from the horizontal configuration to the vertical configuration; and determining the amount of product is in the container (column 2 lines 15-16).



Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 9, 10 are rejected under 35 U.S.C. 103(a) as being obvious over Malow (USPN 5,280,694) in view of Vander Syde et al. (USPN 5,906,468).

With respect to claims 9 and 10, Malow discloses a stacking device comprising a container induction transport (12) that positions a container on a pivoting mechanism (9), but does not disclose the use of a sensor. Vander Syde et al. teaches a stacking device comprising a container induction transport (30) that positions a container (28) on a pivoting mechanism (18), further comprising a microswitch sensor or equivalent sensing elements (column 19 lines 21-28). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the stacking device of Malow to include a photodiode sensor, as taught by Vander Syde et al., since Vander Syde et al. states at column 19 lines 21-28 that such a modification provides detection of the position of the container.

6. Claims 13 is rejected under 35 U.S.C. 103(a) as being obvious over Malow (USPN 5,280,694) in view of Huang et al. (USPN 6,438,928).

In reference to claim 13, Malow discloses a stacking device comprising: a single induction/exit transport (12) positioned at a respective end of at least one pivoting mechanism

(9), but does not disclose a right angle movement device. Huang et al. teaches a stacking device comprising: an induction transport (90) and an exit transport (94) positioned at a respective end of at least one pivoting mechanism (58); and a right angle movement device (96) to move a container (10) substantially at a right angle from the induction transport (90) to the at least one pivoting mechanism (58; figures 5A-5C). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the stacking device of Malow to include a separate induction and exit transport, as taught by Huang et al., for the purpose of returning the container to the initial position, thus providing a single load and unload location for the container.

7. Claims 14-18 and 21-25 are rejected under 35 U.S.C. 103(a) as being obvious over Malow (USPN 5,280,694) in view of Hain (USPN 4,997,176).

Regarding claim 14, Malow discloses a stacking device comprising: a swingable diverting arm including opposing belts configured in pinch belt configuration; and an ejection station including a support and a pusher. Malow does not disclose an ejection station including opposing belts. Hain teaches a stacking device comprising an ejection station (16) including opposing belts (18, 20) configured in a pinch belt configuration. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the ejection station of Malow to include opposing belts, as taught by Hain, for the purpose of maintaining a grip on a product, thereby ensuring proper ejection of the product into an adjacent container.

With respect to claims 15-18 and 21-25, Malow discloses a device for stacking product, comprising: at least one pivoting mechanism (9) pivotable between a first and second position; at least one diverting mechanism including a swingable diverter arm (2) corresponding to the at

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least one pivoting mechanism (9), the at least one diverting mechanism injecting product into a container (8); a feeding area (1) including; an ejection station (3) positioned in a downward angle to inject the product into the container (8); a transport system (1); a lifting device (11); a container transport device (12, 13); a cover (15) positionable over the container (8); and inherently discloses a controller.

8. Claims 20 is rejected under 35 U.S.C. 103(a) as being obvious over Malow (USPN 5,280,694) in view of Hain (USPN 4,997,176) as applied to claim 15 above, and further in view of Vander Syde et al. (USPN 5,906,468).

With respect to claim 20, Malow discloses a stacking device comprising a container induction transport (12) that positions a container on a pivoting mechanism (9), but does not disclose the use of a sensor. Vander Syde et al. teaches a stacking device comprising a container induction transport (30) that positions a container (28) on a pivoting mechanism (18), further comprising a microswitch sensor or equivalent sensing elements (column 19 lines 21-28). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the stacking device of Malow to include a photodiode sensor, as taught by Vander Syde et al., since Vander Syde et al. states at column 19 lines 21-28 that such a modification provides detection of the position of the container.

Allowable Subject Matter

9. Claims 19 and 26-35 are allowed.

The following is a statement of reasons for the indication of allowable subject matter in claims 26-35: The art of record considered as a whole, alone or in combination, neither anticipates nor renders obvious a stacking device and a stacking method comprising the structure

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and steps of: rotating a container to a predetermined angle from a horizontal plane and indexing the container a predetermined distance while injection product into the container; and rotating the container from the inclined configuration to the horizontal configuration to position each product in the container from the horizontal orientation to the substantially vertical orientation.

10. Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter in claim 8: The art of record considered as a whole, alone or in combination, neither anticipates nor renders obvious a stacking device and a stacking method comprising the structure and steps of: rotating a container to a predetermined angle from a horizontal plane and indexing the container a predetermined distance while injection product into the container; and rotating the container from the inclined configuration to the horizontal configuration to position each product in the container from the horizontal orientation to the substantially vertical orientation.

Response to Arguments

11. Applicant's arguments filed February 2, 2006 have been fully considered but they are not persuasive.

Applicant's first argue that the separating module (2) of Malow does not meet the limitations of the diverting arm of Applicant's invention as the opposing belts of the separating module (2) maintain a relative position to one another, whereas Applicant's invention requires the diverting arm to swing. While Examiner agrees that the belts of the separating module (2) of

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Malow maintain a relative position to one another, the belts as a unit swing between a position of feeding product over a container or diverting product to container.

Applicant further argues that Malow fails to disclose covering a container during the method of filling the container. Examiner disagrees as column 2 lines 20-23 states that Malow provides a rakes (15, 17) for ensure proper positioning of product and to prevent ejection of product from the container (18).

Additionally, Applicant has found Malow to omit the disclosure of orienting the product (18) in the container (8) when the container is in a horizontal position. As Applicant has not defined a reference for determining what defines a vertical product or a horizontal product, Examiner has found the product of Malow is delivered in horizontal (parallel) configuration relative to the cover (15, 17) and rotated to a vertical orientation relative to the cover (15, 17) once the container (8) is filled. Nonetheless, Malow teaches the idea of rotating a container and its contents from an angled initial orientation to an orientation transverse to the initial orientation.

The fact that Applicant claims the objects packaged are mail objects is not found to be a structural limitation to the packaging device. Furthermore, the packaging device of Malow is found to be capable of packaging mail objects.

Malow's disclosure of an endless transport system beyond the swingable diverting arm (2) is found to be evidence of an additional diverting location. The idea of having multiple feeding areas is also taught by Hendrickson et al.

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12. Applicant's arguments, see pages 15-16, filed October 10, 2005, with respect to claims 32-35 have been fully considered and are persuasive. The rejection of claims 32-35 has been withdrawn.

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

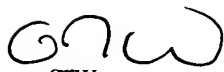
14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Refer to attachment for notice of references cited and recommended for consideration based on their disclosure of limitations of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria R. Weeks whose telephone number is (571) 272-4473. The examiner can normally be reached on 8:30 am - 7:00 pm Monday-Thursday.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


grw
May 1, 2006

Gloria R Weeks
Examiner
Art Unit 3721


Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700